



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/577,854	05/25/00	BURLANDO	A P/4593

MARN & ASSOCIATES
136 DRUM POINT ROAD
SUITE 7A
BRICK NJ 08723

MMC2/0328

EXAMINER

SMITH, R

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 03/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/577,854

Applicant(s)

BURLANDO, ALBERT A.

Examiner

R. Alexander Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

Claim Objections

1. Claims 6-8 are objected to because of the following informalities:

Claim 6:

- a. "the said" in lines 5-6 should be --said--.
- b. a comma should be inserted after "hose connections" in line 11.
- c. "there" in line 24 should be --their--.

Claims 6 and 8, respectively: "improved" in line 1 for each claim should be deleted since claims should not refer to alleged merits.

Claim 7: this dependent claim is objected to because the parent independent claim 6 has limitations drawn to a "fire hydrant" wherein this dependent claim has limitations drawn to a "reflective warning and locating collar."

Claim 8: this dependent claim is objected to because the parent independent claim 6 has limitations drawn to a "fire hydrant" wherein this dependent claim has limitations drawn to an "improved fire hydrant."

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Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1: "their ends" in line 16 lacks antecedent basis with respect to the reflective member. Furthermore "their ends" should state --their said ends-- in order to properly refer to their antecedents.

Claim 2:

a. "said web" makes the claim language indefinite because it is not clear as to which web, i.e., the web for the support member or the web for the reflective member, this limitation is drawn.

b. "such as polyethylene" makes the claim language indefinite because it is not clear if this limitation is being claimed.

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Claim 4:

a. "said ends of said web and said reflective material are secured to each other" makes the claim language confusing and indefinite because of the following:

- 1) There is a web for each of said members, i.e., the support member and the reflective member. So as to which web is the applicant referring?
- 2) It has not been clearly established in claim 1 that the reflective member, or its web, has ends.
- 3) "said reflective material" lacks antecedent basis.
- 4) Is "said ends of said web" drawn to the support member, the reflective member, or the reflective material?
- 5) Is "said reflective material" drawn to the reflective member?
- 6) It is unclear as to which elements "are secured to each other." Are the ends of the web of the support member secured to (the ends of the web) of the reflective material? Are the ends of the web of the support member secured to each other while the ends of the reflective material are secured to each other?

b. the claim language is confusing due to the inconsistency between the preamble and the body of the claim, i.e., scope of the claims is unclear. According to the preamble, the claims are directed to a collar; i.e., subcombination, while in the body of the claim, there is a positive recital of structure indicating that the combination of the collar and "said fire hydrant, pylon or support post" are being claimed. For example, see lines 2-4 regarding "said ends... are secured to each other about said fire hydrant, pylon or support post." Applicant should clarify the claim language

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so that the claim language is consistent with Applicant's intent. Furthermore, Applicant should note that in formulating the rejections on the merits of claim 4, it has been considered that the claims are drawn to the combination of the collar and the fire hydrant, pylon or support post.

Claim 5:

a. "said ends of said web member and said reflective member are secured to said fire hydrant..." makes the claim language confusing and indefinite because of the following:

- 1) There is a web for each of said members, i.e., the support member and the reflective member. So as to which web is the applicant referring?
- 2) It has not been clearly established in claim 1 that the reflective member, or its web, has ends.
- 3) "said web member" should state --said web-- or --said webs-- in order to properly refer to its antecedent or antecedents.
- 4) Is "said ends of said web member" drawn to the support member or the reflective member?

b. the claim language is confusing due to the inconsistency between the preamble and the body of the claim, i.e., scope of the claims is unclear. According to the preamble, the claims are directed to a collar; i.e., subcombination, while in the body of the claim, there is a positive recital of structure indicating that the combination of the collar and "said fire hydrant, pylon or support post" are being claimed. For example, see lines 2-4 regarding "said ends... are secured to said fire hydrant, pylon or support post." Applicant should clarify the claim language so that the

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claim language is consistent with Applicant's intent. Furthermore, Applicant should note that in formulating the rejections on the merits of claim 5, it has been considered that the claims are drawn to the combination of the collar and the fire hydrant, pylon or support post.

Claim 6: "there ends" in line 24 lacks antecedent basis with respect to the reflective member. Furthermore "their ends" should state --their said ends-- in order to properly refer to their antecedents.

Claim 7:

a. "said web" makes the claim language indefinite because it is not clear as to which web, i.e., the web for the support member or the web for the reflective member, this limitation is drawn.

b. "such as polyethylene" makes the claim language indefinite because it is not clear if this limitation is being claimed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes, Jr. in view of Mohs.

Hughes, Jr. discloses a reflective warning and locating collar comprising a support member (the support members 12 around the circumference of the barrel) defined by two parallel longitudinal edges (the side of support members 12 containing the reflective member 13), said edges defining a channel, a reflective member comprised of an elongate flexible web, said reflective member having a plurality of alignable apertures (17) proximate its ends for alignment and receipt of a fastening means (either by rivets to the support, or by ties 19 and 20 to itself), said reflective member (23) being bonded to a substrate (21). Furthermore, Hughes, Jr. discloses that the reflective member is easily replaceable, that alternate support members (rivets) can be used and drilled off for replacement on supports that do not have the support member (12) defined by two parallel longitudinal edges as described above, that the support can have a plurality of collars along the support's height, that the ends of said web are secured to each other about said support, that the ends of said reflective material are secured to each other about said support, that the ends of said web member are secured to each other, that ends of said reflective member are secured to each other, that said ends of said web member and said reflective member are secured to said support, and that the collar is an improved identifiability (column 1, lines 13-52 and via said plurality of collars).

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Hughes, Jr. does not disclose a support member having a web, said web having first and second sides defined by two parallel longitudinal edges, said web having first and second ends, said web having flanges depending from said longitudinal edges, said flanges terminating in inwardly turned second flanges to define a channel between said web and said second flanges, said support member having a plurality of alignable apertures, said web being fabricated from a weather resistant polymer, said reflective members being slidably receivable and securable within said channels.

Mohs discloses a support member having a web, said web having first and second sides defined by two parallel longitudinal edges, said web having first and second ends, said web having flanges (12) depending from said longitudinal edges, said flanges terminating inwardly turned second flanges (14) to define a channel (13) between said web and said second flanges, said support member having a plurality of alignable apertures (16), said web being fabricated from a weather resistant polymer (column 2, lines 61-64), and said reflective members being slidably receivable and securable within said channels. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the support members, taught by Hughes, Jr., with the support member and reflective member with the features above, as taught by Mohs, in order 1) to protect the reflective member from the weather via drip cap 12a, and 2) to allow for easy and quick replacement of the reflective member for all supports, as taught by Mohs and suggested by Hughes, Jr.

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6. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claims 1-3 above, and further in view of Blackman et al.

Hughes, Jr. and Mohs disclose a collar as described in the rejections of claims 1-3 above.

Hughes, Jr. and Mohs do not teach the support being a fire hydrant, pylon or support post, nor do they teach a fire hydrant having improved identifiability wherein the fire hydrant has the features as stated in claim 6 and wherein the fire hydrant has a second reflective warning and locating collar as stated in claim 8.

Blackman et al. discloses a fire hydrant, pylon or support post and a fire hydrant having improved identifiability wherein the fire hydrant has a generally vertically tubular member extending upwardly, a plurality of hose connections extending perpendicularly outwardly from said tubular member, said hose connections having cap members affixed thereto and said tubular vertical member having a cap member affixed to a top end, said cap member incorporating a valve actuator. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the support, taught by Hughes, Jr. and Mohs, with the fire hydrant, as taught by Blackman et al., in order to improve the visibility of a fire hydrant to a driver who is parking or fighting fires, as taught by Blackman et al.

With respect to claim 8, i.e., wherein a second reflective warning and locating collar is positioned about said fire hydrant beneath said extending hose connections: It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the second collar since: 1) it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, St. Regis Paper Co. v Bemis Co., 193 USPQ 8,

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2) it would increase the visibility of the fire hydrant, 3) it would have been obvious to one having ordinary skill in the art at the time of the invention was made to position a collar beneath the extending hose connections since it has been held that rearranging parts of an invention involves only routine skill in the art, In re Japikse 86 USPQ 70, and 4) Hughes, Jr. already discloses said plurality of collars wherein each collar is at a different position along the height of said support.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackman et al. in view of Mohs and Hughes, Jr.

Blackman et al. discloses a reflective warning and locating collar comprising a support member (16) having an elongated, flexible, extruded web (19) having a first and a second side, defined by two parallel longitudinal edges and a first end and a second end, said web having flanges depending from said longitudinal edges of said first side of said web, said flanges terminating with inwardly turned second flanges (21) parallel to said web thereby defining a channel, a reflective member (20 and 17), said ends of said reflective member and said support member having fastening means (30), said ends of said web and said reflective material are secured to each other about said fire hydrant, pylon or support post, said ends of said web member and said reflective member are secured to said fire hydrant, pylon or support post. Blackman discloses a fire hydrant having improved identifiability wherein the fire hydrant has a generally vertically tubular member extending upwardly, a plurality of hose connections

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extending perpendicularly outwardly from said tubular member, said hose connections having cap members affixed thereto and said tubular vertical member having a cap member affixed to a top end, said cap member incorporating a valve actuator.

Blackman et al. does not disclose said reflective member being bonded to a substrate, said reflective member comprised of an elongated web slidably receivable within said channel, said support member such that said reflective member is slidably received within said channel, said support member and said reflective member having a plurality of alignable apertures proximate their ends for receipt of a fastening means, said web being fabricated from a weather resistant polymer, a second reflective warning and locating collar is positioned about said fire hydrant beneath said extending hose connections.

Mohs discloses a support member having a web, said web having first and second sides defined by two parallel longitudinal edges, said web having first and second ends, said web having flanges (12) depending from said longitudinal edges, said flanges terminating inwardly turned second flanges (14) to define a channel (13) between said web and said second flanges, said support member having a plurality of alignable apertures (16), said web being fabricated from a weather resistant polymer (column 2, lines 61-64), and said reflective members (i.e. reflective tape and lenses) being slidably receivable and securable within said channels. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the support member and the reflective members, taught by Blackman et al., with the support member and reflective member, as taught by Mohs, in order 1) to protect the reflective member from the weather via drip cap 12a, 2) to allow for easy and quick replacement

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of the reflective members, and 3) to reduce manufacturing and installation costs, as taught by Mohs.

Hughes, Jr. discloses a barricade having improved identifiability wherein the barricade comprises a support member defined by two parallel longitudinal edges (12) wherein said edges defining a channel. Hughes, Jr. discloses an improved identifiability and a reflective warning and locating collar comprising a reflective member (13) comprised of an elongate flexible web, said reflective member being slidably receivable and securable within the channel, said reflective member having a plurality of alignable apertures (17) proximate its ends for alignment and receipt of a fastening means (either by rivets to the barricade, or by ties 19 and 20 to itself), said reflective member (23) being bonded to a substrate (21). Furthermore, Hughes, Jr. discloses that the reflective member is easily replaceable, that the support can have a plurality of collars along the support's height, that the ends of said web are secured to each other about said support, that the ends of said reflective material are secured to each other about said support, that the ends of said web member are secured to each other, that ends of said reflective member are secured to each other, that said ends of said web member and said reflective member are secured to said support, and that the collar is an improved identifiability (column 1, lines 13-52 and via said plurality of collars). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the reflective member, taught by Blackman et al. and Mohs, with the reflective member, taught by Hughes, Jr. in order 1) to eliminate breakage of lenses, 2) to allow the reflective member to follow the contour of the support member and fire hydrant,

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pylon or support post more readily, and 3) to improve the identifiability by having a plurality of collars along the height.

With respect to claim 8, i.e., wherein a second reflective warning and locating collar is positioned about said fire hydrant beneath said extending hose connections: It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the second collar at a position beneath the extending hose connections since: 1) it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, St. Regis Paper Co. v Bemis Co., 193 USPQ 8, 2) it would increase the visibility of the fire hydrant, 3) it has been held that rearranging parts of an invention involves only routine skill in the art, In re Japikse 86 USPQ 70, and 4) since Hughes, Jr. already discloses said plurality of collars wherein each collar is at a different position along the height.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related collars and hydrants.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Smith whose telephone number is (703) 305-0647. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



**Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800**

RAS

March 23, 2001